



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DWM May-07

GARLICK HARRISON & MARKISON
P.O. BOX 160727
AUSTIN TX 78716-0727

COPY MAILED

MAY 08 2007

OFFICE OF PETITIONS

In re Application of :
Henson et al. : DECISION ON PETITION TO
Application No. 10/612577 : WITHDRAW HOLDING OF
Filed: 07/02/2003 : ABANDONMENT
Attorney Docket No. SIG000098 :

This is a decision on the petition filed on 27 February, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit the issue and publication fees in response to the Notice of Allowance and Fee(s) Due mailed on 22 September, 2006, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 23 January, 2007.

Petitioner asserts that the Notice mailed on 22 September, 2006, was never received.

In the absence of any irregularity in the mailing of the Notice of Allowance, there is a strong presumption that the Notice of Allowance was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official

Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance and Fee(s) Due was properly mailed to petitioner at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioner's counsel, registered patent attorney Bruce E. Stuckman, asserts that a search of the file jacket and docket records indicates that the Notice of Allowance was not received. Additionally, a copy of the docket report where the Office action would have been docketed and entered had it been received has been provided and has been referenced in the practitioner's statement.

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file is being referred to Technology Center 2800 technical support staff for remailing of the Notices mailed on 22 September, 2006. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions